IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 215 of 2003
in
SPECIAL CIVIL APPLICATION No. 1603 of 2003
With
CIVIL APPLICATION No. 1417 of 2003

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT

and

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT FISHERIES CENTRAL CO OP ASSOCIATION LTD.
Versus
UNION OF INDIA

Appearance:
1. LETTERS PATENT APPEAL No. 215 of 2003
MR BB NAIK for Appellant No.

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE K.A.PUJ

Date of decision: 08/04/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

Whether impugned order of Debt Recovery Tribunal, Ahmedabad, challenged in the writ petition under Article 226, despite the statutory provision for appeal under Section 20 of The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (Act), should be entertained or not is a sole question which has surfaced in this Letters Patent Appeal under Clause 15 of the Letters Patent for our consideration and adjudication, to which our positive reply is in the negative.

2. The design of the Act is to provide for establishment of Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto and it is, undoubtedly, one of the important alternative dispute resolutions, measures and mechanisms, in the light of untold stress, strain and miseries to recover public funds. The Parliament, in its wisdom, has provided for the creation of Tribunals so that the Banks' and Financial Institutions' dues and debts could be easily, expeditiously, and with cost effectiveness, recovered so that the same amount of funds could be pumped up for the persons waiting in a queue for such funds for variety of reasons and projects thereby to serve the societal interest.

3. The Act provides clear statutory provision in Section 20, and prescribes an Appeal to the Appellate Tribunal, which reads here as under:

"20. Appeal to the Appellate Tribunal.___

(1) Save as provided in sub-section (2), any person aggrieved by an order made, or deemed to have been made, by a Tribunal under this Act, may prefer an appeal to an Appellate Tribunal having jurisdiction in the matter.

(2) No appeal shall lie to the Appellate Tribunal from an order made by a Tribunal with the consent of the parties.

(3) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the

order made, or deemed to have been made, by the Tribunal is received by him and it shall be in such form and be accompanied by such fee as may be prescribed :

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Tribunal.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal."

It could very well be sen that even for filing an appeal against the order of the Debt Recovery Tribunal, sufficient safeguards have been provided by the Parliament in the Act. It will also be interesting to refer the statutory provision enshrined in Section 21 of the Act, which provides compulsory statutory depositing of 75% of the dues or challenged amount as a condition precedent so as to entertain the appeal under Section 20 of the Debt Recovery Tribunal. No doubt, Proviso does prescribe, that in a good case the discretion is invested with the Appellate Tribunal for waiving or reducing the amount to be deposited under Section 21. Of course, the Tribunal is obliged to state the reasons for that purpose to be recorded in writing.

4. While providing the statutory Appellate Forum in

Section 20 and making some safeguards, and additionally statutorily prescribing 75 per cent of the amount, to be deposited as a condition precedent for filing an appeal, evidently, aims at to discourage the unscrupulous persons and to encourage the bonafide, honest people to take the orders for further judicial scrutiny in the Appellate Forum. With a view to obviate the depositing of 75 per cent of amount as prescribed under Section 21 and with a view to avail the statutory appellate provision, the parties cannot be permitted to invoke extraordinary, plenary, equitable, discretionary writ jurisdiction under Article 226 and 227 of the Constitution of India. Though there is no ban and bar to entertain the petition, the prudence and the practice would, undoubtedly, command that ordinarily when alternative efficacious remedy is available, and, more so, when statutory appellate mechanism is available in the Statute, no petition should be entertained. The view, which we are inclined take, is very reinforced by the decision of the Hon'ble Apex Court rendered in Punjab National Bank Vs. O.C. Krishnan and Others - (2001) 6 Supreme Court Cases 569. In a similar case, it has been clearly propounded and held that the High Court ought not to have exercised its jurisdiction under Article 227, in view of the provision for alternative remedy contained in the Act. It will also be interesting to note that the Act has been enacted with a view to provide a special procedure for recovery of debts due to the banks and financial institutions. There is a hierarchy of appeal provided in the Act. The appeal is provided in Section 20 and obviously therefore such an fast-track procedure cannot be allowed to be derailed either by taking recourse to proceedings under Articles 226 and 227 of the Constitution or by filing a civil suit under Section 9 of the Code of Civil Procedure. It is in this context it has been succinctly observed in the said decision by the Hon'ble Apex Court, that, "Even though a provision under an Act cannot expressly oust the jurisdiction of the court under Articles 226 and 227 of the Constitution, nevertheless, when there is an alternative remedy available, judicial prudence demands that the Court refrains from exercising its jurisdiction under the constitutional writ provisions. In this connection, it would also be interesting to refer the Division Bench decision of this Court delivered by us [Coram: J.N. Bhatt and K.A. Puj, JJ.] in Letters Patent Appeal No. 685 of 2002 on 19-2-2003, wherein, in a similar case, we have taken the same view and we find no reason to make a departure from our earlier view.

5. The learned Advocate for the appellant has taken us through following Judgments in course of his

submissions before us and in support of his version that the impugned order is without jurisdiction and that despite the provision of appeal into the Act, the jurisdiction of the Court, under Article 226/227, is not barred. The proposition, which is advanced and sought to be supported by the following decisions, cannot be questioned. Therefore, without entering into the meticulous details of the entire hosts of case law, relied on by the learned advocate for the appellant, we would just highlight the cases relied on and through which we are taken in course of the submissions, but they are not attracted and applicable to the facts of this case:

1. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Others -
(1998) 8 Supreme Court Cases 1.

2. Dr. Smt. Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others -
AIR 1987 S.C. 2186.

3. Harbanslal Sahnia & Anr. Vs. Indian Oil Corporation Ltd & Others -
2002 (9) SCALE 724.

4. Rohtas Industries Ltd Vs. Rohtas Industries Staff Union and Others -
AIR 1976 SC 425.

5. Union of India and Another Vs. State of Haryana and Another -
(2000) 10 SCC 482.

6. State of West Bengal Vs. North Adjai Coal Co. Ltd
1971 (1) SCC 309.

7. State of U.P.& Ors. Vs. M/s. Indian Hume Pipe Co.Ltd. -
AIR 1977 SC 1132.

8. Himmatlal Harilal Mehta Vs. State of M.P. & Others -
AIR 1954 SC 403.

9. T.C. Basappa Vs. T. Nagappa and Another -
AIR 1954 SC 440.

10. State of U.P. Vs. Mohammad Nooh -
AIR 1958 SC 86.

11. Calcutta Discount Co. Ltd vs.Income-tax Officer, Companies District & Another - AIR 1961 SC 372.

12. A.V. Venkateswaran Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and Another - AIR 1961 SC 1506.

13. M.G. Abrol, Additional Collector of Customs, Bombay and another Vs. M/s. Shantilal Chhotalal and Co. - AIR 1966 SC 197.

6. After having taken into account the entire factual profile and relevant proposition of law and the aforesaid case law, we are of the opinion that this Appeal is without any merits and it is required to be dismissed at the threshold, of course, making it clear that it will be open for the appellant to pursue appropriate available permissible remedy.

7. With these observations, the Appeal shall stand dismissed at the admission stage. There shall be no order on Civil Application No. 1417 of 2003.

[J.N. Bhatt, Actg.C.J.]

rmr. [K.A. Puj, J.]